

## **FINAL STATEMENT OF REASONS:**

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Section 3173.2 of the California Code of Regulations (CCR), Title 15, concerning Visiting Searches.

This action amends provisions governing the searches and inspections for visitors within the California Department of Corrections and Rehabilitation (Department). CCR, Section 3173.2 is being amended to delete probable cause and adopt a reasonable suspicion standard.

These regulations are necessary based on the need to prevent the introduction of contraband by visitors into the Facility/Institutions and to provide a safe and healthy environment for staff, inmates and visitors alike. They will ensure that proper legal standards are followed for clothed body searches involving visitors. In turn, the revised standard would allow the district attorneys to take legal action against those visitors that custody staff had reasonably suspected introduced contraband while visiting, and found contraband through a clothed body search. The change in search standard was recommended by the California District Attorney's Association and aligns the Department with the search standard of other States and the Federal Bureau of Prisons.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons than the action proposed.

**Subsection 3173.2(a) is amended** to delete probable cause and adopt reasonable suspicion in order to ensure that proper legal standards for visitor clothed body searches are followed which would provide a safe, healthy and positive environment for staff, inmates and visitors alike. The Department's intent is not punitive in nature. It is meant as a preventative measure to protect the public by allowing custody staff to search a visitor who they reasonably suspect may introduce contraband into the Facility/Institution. This in turn will allow district attorneys to take legal action against those who attempt to introduce contraband into the Facility/Institution and acts as a preventative measure as well.

**Subsections 3173.2(b) through (g)(1) are unchanged.**

**Subsection 3173.2(g)(2) is amended** to delete probable cause and adopt reasonable suspicion in order to ensure that proper legal standards for visitor clothed body searches are followed which would provide a safe, healthy and positive environment for staff, inmates and visitors alike. The Department's intent is not punitive in nature. It is meant as a preventative measure to protect the public by allowing custody staff to search a visitor who they reasonably suspect may introduce contraband into the Facility/Institution. This in turn will allow district attorneys to take legal action against those who attempt to introduce contraband into the Facility/Institution.

## **DETERMINATION:**

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

## **ASSESSMENTS, MANDATES AND FISCAL IMPACT:**

**This action will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, or create or expand businesses in the State of California.**

**The Department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.**

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states because they are not affected by the internal management of State prisons; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determinations.

## **PUBLIC HEARING COMMENTS:**

**Public Hearing: Held July 31, 2007 at 09:00 a.m.**

## **SUMMARIES AND RESPONSES TO ORAL COMMENTS AT THE PUBLIC HEARING:**

### **Speaker #1**

**Comment 1A:** Commenter disagrees with the proposed change to California Code of Regulations (CCR), Title 15, Section 3173, Visiting Searches, 'probable cause' to 'reasonable suspicion'. Commenter does not understand why visitors are being searched prior to entering the institution for a visit. Commenter states that CDCR already has rules and regulations by which to search visitors on a suspicion.

**Accommodation:** None.

**Response 1A:** The Department contends that visitors are subject to inspection as necessary to ensure Institution/Facility safety and security, including the prevention of the introduction of contraband, and to provide a safe, positive environment for staff, visitors and inmates alike. The Department agrees with the commenter in that there are existing rules and regulations in place. However, the need to change 'probable cause' to 'reasonable suspicion' exists in order to conform with proper legal standards for clothed body searches and standard correctional practice across the United States, and to assist district

attorneys to take legal action against those that custody staff reasonably suspect may have introduced contraband while visiting.

**Comment 1B:** Commenter states that officers out on the streets have to go by probable cause in order to execute a search on a suspect and does not understand why officers in an Institution are able to go outside of the law.

**Accommodation:** None.

**Response 1B:** The Department disagrees with the commenter. Police officers on the street may utilize reasonable suspicion to conduct a pat-search on a suspect they believe has committed, is committing, or is about to commit a crime as upheld in the Supreme Court Decision *Terry vs. Ohio* (1968) 392 U.S. 1, 88 S.Ct.1868. The Department further disagrees with commenter in that the Correctional Officers inside the institution are not going outside the law in utilizing reasonable suspicion as the standard to conduct a pat down search. The CDCR had a search standard of reasonable suspicion in the past. This standard has been accepted by the courts as the appropriate standard for searching of visitors to prisons, including an unclothed body search. (*Estes v. Rowland* (1993) 14 Cal.App.4th 508; *Daugherty v. Campbell* (6th Cir., 1991) 935 F. 2d. 780, cert. den. 502 U.S. 1060; *Hunter v. Auger* (8th Cir. 1982) 672 F.2d 668; *Blackburn v. Snow* (1st Cir. 1983) 771 F. 2d 556; *Thorne v. Jones* (5th Cir. 1985) 765 F.2d 1270 (cert. den. 475 U.S. 1016).

This proposed regulation change is designed as a preventative measure and to bring the Department into conformity with the law and standard correctional practice across the United States. In addition, the reasonable suspicion standard will assist District Attorneys with legal action against those who do attempt to introduce contraband into an institution.

**Comment 1C:** Commenter states she does not understand reasonable suspicion. Commenter believes that something her husband (inmate) has done wrong, something she has done wrong or something she may have questioned, could amount to an officer having reasonable suspicion as a form of retaliation.

**Accommodation:** None.

**Response 1C:** The Department contends that reasonable suspicion is based on articulable facts, circumstances and rational inferences which lead a reasonable and trained officer to believe a person has committed, is committing, or is about to commit a crime.

The Department will not tolerate a Correctional Officer abusing their authority or utilizing reasonable suspicion as a form of retaliation upon a visitor for any reason. The Department would like to assure the commenter that we have specific policies in place to address retaliation issues. If the commenter or other member of the public experiences such treatment, they are encouraged to file a citizen's complaint to the Institution Head where the Correctional Officer is employed according to the process in Title 15, Subsection 3391(c).

**Comment 1D:** Commenter states that they don't see what can be found on a visitor by conducting a pat down search, because as commenter states, we all know that contraband can be introduced into the Institution by way of body cavities.

**Accommodation:** None.

**Response 1D:** The Department contends that visitors are subject to inspection as necessary to ensure Institution/Facility safety and security, including the prevention of the introduction of contraband. Many items can be detected with the performance of a proper clothed body search. The Department further contends that the mere possibility of a clothed body search may act as a deterrent to introduce contraband into the Institution.

Although body cavity search standards are not subject to the proposed regulatory change, the Department would like to take the opportunity to address the issue by asserting that the Department understands that body cavities are utilized as a method to introduce or smuggle out contraband and notes that there are policies in place that specifically address requirements to perform body cavity searches, which include the establishment of probable cause. In addition, under current Department regulations and operational procedures, body cavity searches are not permitted to be conducted by custody staff.

**Speaker #2** (on behalf of T.I.P.S., Taxpayers for Improving Public Safety)

**Comment 2A:** Commenter states that the proposed regulatory action is unconstitutional by allowing Correctional Officers greater authority to search visitors than it would to a judge issuing a search warrant.

**Accommodation:** None.

**Response 2A:** The Department disagrees. Reasonable suspicion is a standard that may be utilized in order to maintain safety and security of an Institution as well as to enforce the Department's regulations and policies. This standard has been accepted by the courts as the appropriate standard for searching of visitors to prisons, including an unclothed body search. (*Estes v. Rowland* (1993) 14 Cal.App.4th 508; *Daugherty v. Campbell* (6th Cir., 1991) 935 F. 2d. 780, cert. den. 502 U.S. 1060; *Hunter v. Auger* (8th Cir. 1982) 672 F.2d 668; *Blackburn v. Snow* (1st Cir. 1985) 771 F. 2d 556; *Thorne v. Jones* (5th Cir. 1985) 765 F.2d 1270 (cert. den. 475 U.S. 1016). Therefore, searching a visitor under reasonable suspicion is not a violation of their constitutional rights.

**Comment 2B:** Commenter states that the proposed regulatory change allows a lower standard for the officers and is a bill of attainder against a class of citizens known as inmate visitors.

**Accommodation:** None.

**Response 2B:** The Department's position on the proposed regulation change is to bring the Department into conformity with the law and standardized correctional practice. For a few years, the department held to a "probable cause" standard. However, the allowable legal standard did not change; reasonable suspicion has always been the requirement by law. The Department has had the standard of reasonable suspicion in the past. This standard has been accepted by the courts as the appropriate standard for searching of visitors to prisons, including an unclothed body search.

The Department's proposed regulatory action is not that of a Bill of Attainder, and not meant to be misconstrued as declaring a person or group of persons guilty of a crime without the benefit of a trial. It is rather, once again, a change to bring the Department into conformity with the law and standard correctional practice across the United States.

**Comment 2C:** Commenter makes reference to a “Terry Stop” and notes that there is very little, if any, case law or precedent to support the proposed regulatory change.

**Accommodation:** None.

**Response 2C:** The Department disagrees with the commenter in that the decision rendered in *Terry vs. Ohio*, United States Supreme Court Case, 1968, held that a clothed body search is justified and necessary for the protection of the officer and others nearby, and must be limited to the search of the outer surfaces of one’s clothing. In addition, subsequent court rulings upheld that warrantless searches by administrative authorities such as prisons are justified by “special needs beyond the normal need for law enforcement”.

Reasonable suspicion is a standard that may be utilized in order to maintain safety and security of an Institution as well as to enforce the Department’s regulations and policies. This standard has been accepted by the courts as the appropriate standard for searching of visitors to prisons, including an unclothed body search. (*Estes v. Rowland* (1993) 14 Cal.App.4th 508; *Daugherty v. Campbell* (6th Cir., 1991) 935 F. 2d. 780, cert. den. 502 U.S. 1060; *Hunter v. Auger* (8th Cir. 1982) 672 F.2d 668; *Blackburn v. Snow* (1st Cir. 1985) 771 F. 2d 556; *Thorne v. Jones* (5th Cir. 1985) 765 F.2d 1270 (cert. den. 475 U.S. 1016).

The Department stands with the proposed regulatory action simply because one of the prime interests of prison officials is to prevent the introduction of contraband into the Institution and to provide a safe, positive environment for visitors, staff and inmates alike.

**Comment 2D:** Commenter states that the Department is advancing a big lie in that contraband comes into the Institutions through visitors. Commenter further states that visitors not only are required to empty their pockets and take their shoes off in order to visit, they have to pass through a metal detector.

**Accommodation:** None.

**Response 2D:** The Department agrees with commenter in regards to inmate visitor process. Visitors are required to walk through metal detectors, remove their shoes, and empty their pockets as part of the process to enter an institution for a visit with an inmate. This part of the process is designed to assist in the detection of visitors attempting to introduce contraband into the institutions.

The Department disagrees with commenter in regards to introduction of contraband by visitors being “big lie.” Statistical data requested and received from the Offender Information Services Branch (OISB) shows during 2006 there were approximately 155 reported cases involving visitors and the introduction of contraband into an institution. Of the 155 cases, 138 were drug related, 10 were noted as other, and 7 were possession of a weapon. Information on how many cases were actually prosecuted is unknown as OISB only keeps track of incidents reported for all institutions, not their outcome.

Additionally, there have been several reported incidents during 2007, involving visitors attempting to introduce large quantities of drugs into the institutions. Recent examples include:

- A visitor attempting to introduce approximately 54 grams of heroin along with six bindles of tobacco and rolling papers.

- A visitor was found with an undisclosed amount of oxycontin intended for the inmate to distribute and sell to other inmates.
- A visitor in possession of marijuana.
- A visitor who was served a search warrant voluntarily gave officers contraband, to include coffee, tobacco and suspected black tar heroin.
- Two boxes identified with approximately 25 large bags of tobacco, 2 bindles of marijuana, 4 small bindles of rock cocaine, 1 small bindle of methamphetamine, 2 star wrenches, rolling papers and various cigarette lighters.
- A visitor was found with marijuana on their person. A subsequent search of their vehicle produced a loaded Beretta .25 caliber, semi-automatic handgun.
- A visitor suspected of drug trafficking found with approximately 24 grams of tobacco and 55 grams of heroin on their person.
- A visitor attempted to introduce approximately 19 grams of marijuana into an institution.

**Comment 2E:** Commenter states that inmates coming out of visiting submit to a full body cavity strip search, and that for the Department to offer up some sort of logic that they bring contraband such as tins of tobacco, hypodermic needles and cell phones obtained from the visitors into the institution is ludicrous.

**Accommodation:** None.

**Response 2E:** The Department disagrees with the commenter. When an inmate is processed out of the visiting area, they submit to an unclothed body search, which consists of inspecting each item of clothing as the inmate disrobes and then a visual search of the inmate's body. Commenter makes reference to a body cavity search. Under current Departmental regulations and operational policy correctional personnel, other than qualified medical staff, are NOT permitted to conduct a search of an inmate's body cavities other than visual.

**Comment 2F:** Commenter states that the Department continues to allow staff members into the Institutions with duffel bags that remain unsearched, which provides a gaping hole in security.

**Accommodation:** None.

**Response 2F:** Although the search standards of Departmental staff are not subject to the proposed regulatory change, the Department would like to take the opportunity to address the issue by asserting that the Department currently has operational procedures in place that govern the search of employees.

All persons employed by the Department that come onto Prison grounds or into the Institution and Facilities are subject to search of their person, property and vehicles, to the extent deemed necessary by the official in charge. Upon entering and exiting the Institution, all employees must open their personal lunch bag, etc. in order for the front gate officer to inspect the contents inside.

An employee's consent to search is a condition of employment which may not be withdrawn while in or on the grounds of an Institution or Facility of the Department. A visitor, on the other hand, when subject to a warrantless search has the right to refuse and leave institutional grounds without a visit for that day.

### **Speaker #3**

**Comment 3A:** Commenter states that they have been visiting an inmate for almost three years now and they have seen good and bad on both sides of the fence (Correctional Officers and Visitors). Commenter further states that prior to visiting, visitors must remove their shoes, jewelry and pass through a metal detector so there is no way tobacco in tins, cell phones, or anything else can get inside the facility by visitors.

**Accommodation:** None.

**Response 3A:** Please refer to Speaker #2, Response 2D.

**Comment 3B:** Commenter states that they consistently see staff enter the Institutions carrying huge duffle bags that are not checked for contraband.

**Accommodation:** None.

**Response 3B:** Please refer to Speaker #2, Response 2F.

**Comment 3C:** Commenter states that she does realize that some visitors attempt to introduce contraband into the Institutions, and believes the regulations the Department currently has in place are sufficient to catch them. However, commenter believes that the Department is not doing enough to catch staff that introduce contraband into the Institutions.

**Accommodation:** None.

**Response 3C:** Please refer to Speaker #2, Response 2F.

### **SUMMARIES AND RESPONSES TO WRITTEN COMMENTS:**

#### **Commenter #1:**

**Comment 1A:** Commenter states that under the current requirement, an officer must have probable cause in order to search a visitor. The new proposal seeks to change this standard to a lower one of mere suspicion. Commenter feels that this standard change could very easily be abused.

**Accommodation:** None.

**Response 1A:** The Department disagrees with commenter. Warrantless searches by administrative authorities such as prisons are justified by “special needs beyond the normal need for law enforcement.”

Reasonable suspicion is a standard that may be utilized in order to maintain safety and security of an Institution as well as to enforce the Departments regulations and policies. The Department has had a search standard of reasonable suspicion in the past. This standard has been accepted by the courts as the appropriate standard for searching of visitors to prisons, including an unclothed body search. (*Estes v. Rowland* (1993) 14 Cal.App.4th 508; *Daugherty v. Campbell* (6th Cir., 1991) 935 F. 2d. 780, cert. den.

502 U.S. 1060; *Hunter v. Auger* (8th Cir. 1982) 672 F.2d 668; *Blackburn v. Snow* (1st Cir. 1985) 771 F.2d 556; *Thorne v. Jones* (5th Cir. 1985) 765 F.2d 1270 (cert. den. 475 U.S. 1016).

The Department stands with the proposed regulatory action simply because one of the prime interests of prison officials is to prevent the introduction of contraband into the Institution and to provide a safe, positive environment for visitors, staff and inmates alike.

Regarding abuse of power, please refer to Speaker #1, Response 1C.

**Comment 1B:** Commenter states that the apparent justification for seeking the reduction in the search standard is to find more contraband allegedly being smuggled into prisons by visitors. Commenter suggests that the Department increase scrutiny over prison staff who are currently allowed to bring in duffel bags which are unsearched and do not pass through metal detectors.

**Accommodation:** None.

**Response 1B:** The Department disagrees with the commenter. The Department's position on the proposed regulatory action is based on the need to prevent the introduction of contraband by visitors into the Facility/Institutions and to provide a safe and healthy environment for staff, inmates and visitors alike. The proposed regulatory action will ensure that proper legal standards are followed for clothed body searches involving visitors. In turn, the revised standard would allow the district attorneys to take legal action against those visitors that custody staff had reasonably suspected introduced contraband while visiting, and on whom contraband was found through a clothed body search.

In regards to Departmental staff being allowed to bring duffel bags unsearched into the Institutions/Facilities, please refer to Speaker #2, Response 2F.

### **Commenter #2**

**Comment 2A:** Commenter states in reference to Title 15, Section 3173.2, deleting probable cause and adopting reasonable suspicion as a guide to strip searching visitors seems illegal and is an infringement on the visitor's constitutional rights.

**Accommodation:** None.

**Response 2A:** The Department would like to assure the commenter that search procedure regarding visitor unclothed body searches are not subject to the proposed regulatory changes to Title 15, Section 3173.2. Visitor unclothed body searches still require probable cause as noted in Title 15, Subsection 3176(A). The proposed regulatory change of probable cause to reasonable suspicion specifically deals with visitor clothed body searches (pat-down searches), and is not in violation of a visitor's constitutional rights. The Department also would like to inform the commenter that unless a warrant is obtained from a magistrate, the visitor has the right to refuse the search, and leave Institutional grounds without a visit for that day.

**Comment 2B:** Commenter states that lowering the standard from probable cause to reasonable suspicion will only serve as an invitation for Correctional Officers to abuse their power and subject visitors to continued disrespect and harassment.

**Accommodation:** None.



**Response 2B:** The Department disagrees with the commenter. The Department asserts that all Correctional Officers are required to sign an oath of office which holds them to a higher standard of professional conduct. Furthermore, there are Departmental regulations and operational procedures in place stating in part, “employees will be courteous and professional in their dealings with inmates, fellow employees, visitors and members of the public.”

If the commenter or other member of the public experiences such treatment, they are encouraged to file a citizen’s complaint to the Institution Head where the Correctional Officer is employed according to the process in Title 15, Subsection 3391(c).

The Department will not tolerate an abuse of power by an officer and has operational procedures in place specifically related to such issues.

**Comment 2C:** Commenter provides the Black’s Law Dictionary definitions for Probable Cause, Reasonable Suspicion and the Fourth Amendment and suggests that the probable cause standard for visitor searches remain in place.

**Accommodation:** None.

**Response 2C:** The Department disagrees with the commenter. The Department’s position on the proposed regulatory action is based on the need to prevent the introduction of contraband by visitors into the Facility/Institutions and to provide a safe and healthy environment for staff, inmates and visitors alike. The proposed regulatory action will ensure that proper legal standards are followed for clothed body searches involving visitors. In turn, the revised standard would allow the district attorneys to take legal action against those visitors that custody staff had reasonably suspected introduced contraband while visiting, and on whom contraband was found through a clothed body search. In turn, this will assist in providing for a safe and healthy environment for visitors to visit with their loved ones who are incarcerated.

### **Commenter #3**

**Comment 3A:** Commenter states that each time they visit the prison, they feel violated as it is. Commenter can not believe that the Department can not prohibit contraband in the system and notes that the subject is the farthest from their mind and wonders how the contraband is really getting in.

**Accommodation:** None.

**Response 3A:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

### **Commenter #4**

**Comment 4A:** Commenter contends that the Department wants to be able to search someone just because they are a person of color and proceeds to ask what the Department is thinking and if the Department remembers the Civil War.

**Accommodation:** None.

**Response 4A:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Comment 4B:** Commenter makes remarks for the Department to wake up and realize that the guards are the ones bringing in the contraband and getting rich from it.

**Accommodation:** None.

**Response 4B:** The Department understands that it must be diligent in stopping the introduction of contraband from any source. For statistical data regarding visitors, please Refer to Speaker #2, Response 2D.

#### **Commenter #5**

**Comment 5A:** Commenter states that they would gladly submit to frequent strip searches as soon as the Department imposes the same on staff. Commenter further contends that visitors walk through metal detectors while staff walk in with duffel bags unsearched.

**Accommodation:** None.

**Response 5A:** The Department would like to assure the commenter that search procedures regarding visitor unclothed body searches are not subject to the proposed regulatory changes to Title 15, Section 3173.2. Visitor unclothed body searches still require probable cause as noted in Title 15, Subsection 3176(A).

In regards to staff searches, please refer to Speaker #2, Response 2F.

#### **Commenter #6**

**Comment 6A:** Commenter states in reference to Title 15, Section 3173.2, it is wrong to allow CDCR employees to subject visitors to a search for reasonable suspicion instead of probable cause.

**Accommodation:** None.

**Response 6A:** Please refer to Speaker #1, Response 1A.

#### **Commenter #7**

**Comment 7A:** Commenter states that it would be insane to believe any visitor would ever need to be strip searched and stated that reasonable suspicion is not an adequate means to determine the need for a search.

**Accommodation:** None.

**Response 7A:** Please refer to Commenter #2, Response 2A in regards to strip searches.  
Please refer to Commenter #1, Response 1A in regards to reasonable suspicion.

**Comment 7B:** Commenter states that on several occasions while attempting to visit an inmate, they have encountered a staff member that was less than professional. Commenter informs that they were traveling to the Institution to visit when they encountered an unexpected delay with road work. Commenter phoned the Institution visiting area to let them know they would be late for their time slotted visit. Commenter states that the visiting staff was less than professional in telling them they would not be able to visit if they were not at the visiting center by a certain time. Commenter contends that it was not their fault for being late, and they should not have been penalized for it. Commenter further states that they work all day on Friday, drive 14 hours to visit, and return home to go to work on Monday morning. Commenter points out that they will be upset if they travel so far and don't get to visit their loved one because of some staff member deciding they were too late or needed to be searched.

**Accommodation:** None.

**Response 7B:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Comment 7C:** Commenter objects to the proposed regulatory change to Title 15, subsection 3173.2, Visitor Searches. Commenter contends that laws which regulate the public state reasonable cause and believes it needs to stay that way.

**Accommodation:** None.

**Response 7C:** Please refer to Commenter #1, Response 1A.

**Comment 7D:** Commenter suggests that if the Department wants to catch more contraband coming into the Institutions, start having the cops go through metal detectors.

**Accommodation:**

**Response 7D:** Please refer to Speaker #2, Response 2F.

#### **Commenter #8**

**Comment 8A:** Commenter states that they are angered about the proposed regulatory change to Visiting Searches in that it will bring back strip searches of visitors, which commenter finds heinous, especially on people who have done nothing wrong.

**Accommodation:** None.

**Response 8A:** Please refer to Commenter #2, Response 2A.

**Comment 8B:** Commenter states that everyone knows where the contraband is coming from both outside and especially on the inside of an Institution.

**Accommodation:** None.

**Response 8B:** The Department cannot interpret a clear meaning to the commenter's statement, but would like to refer the commenter to Speaker #2, Response 2D, in regards to statistical data on visitors and the introduction of contraband into the Institutions.

**Comment 8C:** Commenter states that visitors have fears that the proposed regulatory action will bring back strip searching of visitors. Commenter would like clarification on this matter in order to assuage the fears of the visitors.

**Accommodation:** None.

**Response 8C:** The Department would like to clarify to commenter that strip searches are outside of the scope of this rulemaking. Clothed body searches of visitors is the subject of this rulemaking.

In addition, the Department assures the commenter that no major change in the visiting process is expected. The reasonable suspicion standard simply assists the District Attorneys to prosecute those visitors that are in fact attempting to introduce contraband into the institutions.

#### **Commenter #9**

**Comment 9A:** Commenter states it is bad enough that visitor's are already treated like criminals, now the Department wants to further intimidate them by making Reasonable Suspicion the "go ahead" to strip search anybody they want for the slimmest of evidence or even no evidence at all.

**Accommodation:** None.

**Response 9A:** Please refer to Commenter #2, Response 2A.

**Comment 9B:** Commenter states it is well known that the guards are bringing in the vast majority of the contraband, but they are ignored. Commenter wants to know why?

**Accommodation:** None.

**Response 9B:** Please refer to Speaker #2, Response 2F.

**Comment 9C:** Commenter would like to know why the visitors and inmates are being searched but the guards are not.

**Accommodation:** None.

**Response 9C:** Refer to Speaker #2, Response 2F.

#### **Commenters #10 and #11 (duplicative template letter)**

**Comment 10/11A:** Commenter states they are very concerned over the proposed regulatory change concerning the strip searching of visitors. Commenter references Title 15, Subsection 3173.2 and is concerned that searches will be conducted based on reasonable suspicion rather than probable cause.

**Accommodation:** None.

**Response 10/11A:** Please refer to Commenter #2, Response 2A in regards to strip searches.  
Please refer to Commenter #1, Response 1A in regards to reasonable suspicion.

**Comment 10/11B:** Commenter states that they were previously subjected to humiliating treatment under probable cause. Commenter further states they feel officers in charge abuse their power and can not even imagine what they will do under reasonable suspicion.

**Accommodation:** None.

**Response 10/11B:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

In regards to abuse of power, please refer to Commenter #2, Response 2B.

**Comment 10/11C:** Commenter states they have seen so much unreasonableness from officers to visitors and does not believe they signed away their citizen's rights just to visit their loved one behind the cold prison walls. Commenter questions where their protection against illegal search and seizure is. Commenter further questions whether they lost this right just because they walked onto prison grounds.

**Accommodation:** None.

**Response 10/11C:** The Department would like to assure commenter that their Constitutional Rights will not be violated as a result of the proposed regulatory change. Any violation of their rights by a CDCR peace officer or other staff member is subject to review in court.

Upon entering prison grounds, every person is noticed by a posted sign that visitors are subject to searches and that specific and unauthorized contraband is not allowed on prison grounds. Each visitor is subject to search to the degree necessary to ensure institution security and prevent the introduction of contraband. A prison by its very nature calls for heightened security measures to ensure staff, inmates and visitors alike have a safe, secure and positive environment in which to work, live and visit.

The standard for searches is similar to that used in airports. If a free citizen wants to take a flight, whether domestic or international, they are subject to heightened security measures under reasonable suspicion in order to ensure the safety of all who fly. Further, unlike CDCR custody staff, airport screeners are not sworn peace officers.

**Comment 10/11D:** Commenter asks that the Department help protect them against officers who have an axe to grind or who are prejudiced by leaving the standard of probable cause in place.

**Accommodation:** None.

**Response 10/11D:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Comment 10/11E:** Commenter states they feel the Department is directly attacking their constitutional rights and requests that they not be left to the mercy of reasonable suspicion.

**Accommodation:** None.

**Response 10/11E:** The Department's intention is not to attack a visitor's constitutional rights. The Department's position on the proposed regulatory action is based on the need to prevent the introduction of contraband by visitors into the Facility/Institutions and to provide a safe and healthy environment for staff, inmates and visitors alike. The proposed regulatory action will ensure that proper legal standards are followed for clothed body searches involving visitors. In turn, the revised standard would allow the district attorneys to take legal action against those visitors that custody staff had reasonably suspected introduced contraband while visiting, and on whom contraband was found through a clothed body search. The Department has proposed this regulatory change to bring us into conformity with the law and standard correctional practice across the United States.

### **Commenter #12**

**Comment 12A:** Commenter states that the change to CDCR regulations, Subsection 3173.2, from probable cause to reasonable suspicion in searching a visitor's person or vehicle is in violation of the United States Constitution as held in *Terry v. Ohio* and subsequent cases. Commenter makes reference to the definition of reasonable suspicion and that it applies only to the pat down of the outer clothing of the person in question.

**Accommodation:** None.

**Response 12A:** Please refer to Speaker #2, Response 2C.

**Comment 12B:** Commenter states that if a street police officer has to have probable cause to search a detainee for items other than weapons, Correctional Officers must have probable cause to search visitors for contraband other than weapons.

**Accommodation:** None.

**Response 12B:** Please refer to Speaker #1, Response 1B.

**Comment 12C:** Commenter states that unless CDCR can point out specific case law that allows Correctional Officers to search visitors and their vehicles based on reasonable suspicion, the proposed regulatory changes are unconstitutional.

**Accommodation:** None.

**Response 12C:** Reasonable suspicion is a standard that may be utilized in order to maintain safety and security of an Institution as well as to enforce the Departments regulations and policies. This standard has been accepted by the courts as the appropriate standard for searching of visitors to prisons, including an unclothed body search. (*Estes v. Rowland* (1993) 14 Cal.App.4th 508; *Daugherty v. Campbell* (6th Cir., 1991) 935 F. 2d. 780, cert. den. 502 U.S. 1060; *Hunter v. Auger* (8th Cir. 1982) 672 F.2d 668; *Blackburn v. Snow* (1st Cir. 1985) 771 F. 2d 556; *Thorne v. Jones* (5th Cir. 1985) 765 F.2d 1270 (cert. den. 475 U.S. 1016). Therefore, searching a visitor under reasonable suspicion is not a violation of their constitutional rights.

### **Commenter #13**

**Comment 13A:** Commenter objects to the proposed regulatory change stating that CDCR will abuse the standard against visitors by form of retaliation if they don't care for that visitor or the inmate they are visiting.

**Accommodation:** None.

**Response 13A:** Please refer to Speaker #1, Response 1C.

**Comment 13B:** Commenter states that the Department needs to focus on the actual people who bring drugs into the Institution, referencing that the guards and free staff bring most of the contraband inside.

**Accommodation:** None.

**Response 13B:** Please refer to Speaker #2, Response 2D.

### **Commenter #14**

**Comment 14A:** Commenter references the Title 15, Employee Section and questions if the same rules are applied to searches of employee personal items or their uniform pockets.

**Accommodation:** None.

**Response 14A:** Please refer to Speaker #2, Response 2F.

**Comment 14B:** Commenter states that visitors go through a great deal just to see their loved ones, yet when contraband gets inside the prison they are the first ones to be blamed. Commenter further states that they know for a fact this is not true as they have seen it for themselves. Commenter contends that there is no way a visitor can get a cell phone or charger through a metal detector.

**Accommodation:** None.

**Response 14B:** The Department's intention is not to place blame on anybody or to point fingers. The Department understands that it must be diligent in stopping the introduction of contraband from all sources. Cell phones are only one type of contraband that may be attempted to be brought into an institution by a visitor. Please refer to Speaker #2, Response 2D for statistics on visitors and the introduction of contraband.

In addition, if commenter has seen or should see contraband introduced by a staff member, the Department encourages visitor to file a staff complaint in accordance with Title 15, Subsection 3391(c).

**Comment 14C:** Commenter request that the proposed regulatory changes be applied to all Correctional employees in addition to visitors.

**Accommodation:** None.

**Response 14C:** This comment is outside the scope of the proposed regulatory action. Clothed body searches of visitors is the subject of this rulemaking.

## **Commenter #15**

**Comment 15A:** Commenter questions if the proposed regulatory change to visitor searches pertains to visitors only?

**Accommodation:** None.

**Response 15A:** The Department asserts that the proposed regulatory change of probable cause to reasonable suspicion in Title 15, Subsection 3173.2 does in fact pertain to visitors only. Departmental staff is subject to searches under separate Departmental operational policies.

**Comment 15B:** Commenter requests a definition of reasonable suspicion.

**Accommodation:** None.

**Response 15B:** The Department contends that legal dictionaries define reasonable suspicion as articulable facts, circumstances and rational inferences which lead a reasonable and trained officer to believe a person has committed, is committing, or is about to commit a crime.

**Comment 15C:** Commenter states that it is widely known that most drugs introduced inside the Institutions are brought in by the guards and request that drug sniffing dogs be placed at the sally ports where guards enter and exit the Institution.

**Accommodation:** None.

**Response 15C:** The Department contends that regulations and Departmental policies on employee searches are not subject to the proposed regulatory change in Title 15, Subsection 3173.2.

Please refer to Speaker #2, Response 2D for information on visitors and the introduction of contraband.

**Comment 15D:** Commenter questions whether or not the Department truly wants to find the source of drugs being brought into the Institutions because of the refusal to place drug sniffing dogs where the guards enter.

**Accommodation:** None.

**Response 15D:** The Department contends that regulations and Departmental policies on employee searches are not subject to the proposed regulatory change in Title 15, Subsection 3173.2. However, the Department would like to assure that all avenues/alternatives to curtail the introduction of contraband by way of prison employee are open to Departmental review.

**Comment 15E:** Commenter states that with the display of intellect the Departments Correctional Officers display, one wonders what reasonable suspicion might mean.

**Accommodation:** None.

**Response 15E:** The Department is unsure of what message the commenter is trying to convey in regards to the intellect they have seen displayed by correctional officers. The Department can not formulate a meaningful response to such a personalized and/or generalized comment; however, the



Department can state that our correctional officers are trained law enforcement professionals that are fully capable of determining what meets the definition of reasonable suspicion.

For a definition of reasonable suspicion as listed in legal dictionaries see Commenter #15, Response 15B.

**Commenter #16** (commenter #16 also spoke at the public hearing and is listed as Speaker #2)

**Comment 16A:** Commenter expresses objection to Title 15, subsections 3173.2(a) and 3173.2(g)(2) visitor searches, specifically in the proposed regulatory change of standard from probable cause to reasonable suspicion. Commenter states that visitors need to be treated with respect as they are not inmates or convicted felons.

**Accommodation:** None.

**Response 16A:** The Department agrees that visitors to its institutions should be treated with respect. The Department asserts that all Correctional Officers are required to sign an oath of office which holds them to a higher standard of professional conduct. Furthermore, there are Departmental regulations and operational procedures in place stating in part, “employees will be courteous and professional in their dealings with inmates, fellow employees, visitors and members of the public.” If the commenter or other member of the public experiences such treatment, they are encouraged to file a citizen’s complaint to the Institution Head where the Correctional Officer is employed according to the process in Title 15, section 3391(c). The Department will not tolerate an abuse of power by an officer and has operational procedures in place specifically related to such issues.

**Comment 16B:** Commenter states that there are some Departmental staff that have become so callous and should not be able to work in positions that deal with the public. Staff such as this project a negative image for the Department. Commenter believes that the lowered standard of reasonable suspicion from probable cause creates a clear and present danger for abuse by Correctional Officers.

**Accommodation:** None.

**Response 16B:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

In regards to danger of abuse by Correctional Officers, please refer to Speaker #1, Response 1C.

**Comment 16C:** Commenter states that mere suspicion is a standard of search that has been rejected by the Supreme Court for all other types of searches away from prisons. On this basis alone, the standard of probable cause should be maintained.

**Accommodation:** None.

**Response 16C:** The Department disagrees. Reasonable suspicion is a standard that may be utilized in order to maintain safety and security of an Institution as well as to enforce the Departments regulations and policies. This standard has been accepted by the courts as the appropriate standard for searching of visitors to prisons, including an unclothed body search. (*Estes v. Rowland* (1993) 14 Cal.App.4th 508;

*Daugherty v. Campbell* (6th Cir., 1991) 935 F. 2d. 780, cert. den. 502 U.S. 1060; *Hunter v. Auger* (8th Cir. 1982) 672 F.2d 668; *Blackburn v. Snow* (1st Cir. 1985) 771 F. 2d 556; *Thorne v. Jones* (5th Cir. 1985) 765 F.2d 1270 (cert. den. 475 U.S. 1016).

**Comment 16D:** Commenter states that the introduction of this lower standard is regretfully an invitation for abuse.

**Accommodation:** None.

**Response 16D:** Please refer to Speaker #1, Response 1C.

\* Please note the commenter's attachment of proposed litigation if proposed regulatory action to Title 15, Subsection 3173.2 is adopted.

### **Commenter #17**

**Comment 17A:** Commenter objects to the proposed regulatory change in that it is construed as a new means of harassment on visitors who are tax paying citizens.

**Accommodation:** None.

**Response 17A:** Please refer to Commenter #2, Response 2B.

**Comment 17B:** Commenter contends that the proposed regulatory change grants CDCR greater power to discourage citizens from visiting their loved ones in prison.

**Accommodation:** None.

**Response 17B:** The Department disagrees. It is not the Department's intent to discourage visitors from seeing their loved ones. The Department's goal is to provide a positive, healthy and safe environment in which visitors can maintain family and community connections to assist in preparing the inmate for successful rehabilitation and release. The introduction of contraband from any source undermines this goal.

**Comment 17C:** Commenter states the proposed regulatory change threatens an infringement upon visitor's constitutional right under the Fourth Amendment.

**Accommodation:** None.

**Response 17C:** Please refer to Speaker #2, Response 2A.

**Comment 17D:** Commenter states that if reasonable suspicion alone were the test, the Fourth Amendment would evaporate under the discretion of the police and that probable cause is adequate, just and proper for prison officials to conduct their job duties.

**Accommodation:** None.

**Response 17D:** Please refer to Speaker #2, Response 2A.

**Comment 17E:** Commenter believes the proposed regulatory change poses a risk for abuse as applied in the manner set forth and becomes a mechanism in which prison officials will disallow future visits based on a citizen's right to refuse to be searched on the first occasion, thus forcing a citizen to comply with the search or forever be disallowed to visit even after the original reasonable suspicion is no longer present.

**Accommodation:** None.

**Response 17E:** The Department disagrees. Under current rules, the visitor may refuse to be searched and may leave CDCR grounds forfeiting visiting for that day only. In regards to abuse, please refer to Commenter #2, Response 2B.

In addition, the Department assures the commenter that when a visitor declines to submit to the search requested, they are denied visiting privileges for that day. A visitor will not be forced to comply with a search request unless a court issued warrant exists or criteria under Title 15, section 3292, Arrest and Detention are present.

For additional information on the denial, suspension, termination, or revoking of visits, see Title 15, Section 3176.

**Comment 17F:** Commenter request the proposed regulatory change be denied based on the potential increase for law suits and inmate appeals.

**Accommodation:** None.

**Response 17F:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

### **Commenter #18**

**Comment 18A:** Commenter states that the proposed regulatory change to CCR subsection 3173.2, visiting searches, will not only expose correctional officers to lawsuits when their suspicions are false but will also subject visitors to intrusive personal searches.

**Accommodation:** None.

**Response 18A:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Comment 18B:** Commenter states that the visiting process will get bogged down due to an increase in workload for staff.

**Accommodation:** None.

**Response 18B:** The Department disagrees. The visiting process is not going to vary from the process already in place. The proposed regulatory change does not call upon officers to increase the amount of visitor searches conducted. The proposed change is simply to allow the Department to ensure proper legal standards are followed, to comply with standardized correctional practice across the United States, and to allow district attorneys to take legal action against those visitors who are reasonably suspected of introducing contraband during visiting.

**Comment 18C:** Commenter states that nowhere in the proposed regulatory change is reasonable suspicion articulated, and that staff will have trouble deciding if the color and fabric of clothing a visitor is wearing is suspicious or not. Commenter further states that visitors are already discouraged at the arbitrary decisions correctional officers make in regard to their clothing. What a visitor has worn in the past may suddenly become unacceptable to a newly assigned officer in visiting.

**Accommodation:** None.

**Response 18C:** The Department notes that the definition of reasonable suspicion is not articulated in the proposed change because it is applicable not only to the CDCR but to all law enforcement agencies nationwide. The definitions listed in the Title 15, Section 3000 are reserved for terms used specifically in departmental regulations.

In addition, the Department assures the commenter that correctional officers are highly trained professionals who are fully capable of determining what meets the definition of reasonable suspicion.

For a definition of reasonable suspicion as listed in legal dictionaries, please refer to Commenter #15, Response 15B.

**Comment 18D:** Commenter states that the proposed regulation change will disrespect the one proven rehabilitation program whose expenses are not only funded by CDCR but also the visitors who support their loved ones at a minimum of 3.3 million dollars per month.

**Accommodation:** None.

**Response 18D:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment. However, the Department can assure commenter that other programs besides visiting have proven to be effective in the rehabilitation of inmates.

**Comment 18E:** Commenter expresses that they understand the frustration prison officials face when dealing with destructive and sometimes dangerous contraband. Commenter suggests that to counter the obvious, correctional officers must submit to a detection process and all packages received in the Institution must be searched.

**Accommodation:** None.

**Response 18E:** The Department contends that regulations and policies specific to staff searches exist and are enforced.

Please refer to Speaker #2, Response 2F, for additional information on staff searches.

In addition, the Department has adopted its current vendor package program, in part, to reduce the amount of contraband that was being introduced through packages sent to inmates. The Department asserts that current operational procedures in place require the search of all packages sent to inmates via third party, such as vendors.

**Comment 18F:** Commenter states the proposed regulatory change is unnecessary, potentially costly, and should not be enacted.

**Accommodation:** None.

**Response 18F:** Please refer to Speaker #1, Response 1A.

#### **Commenter #19**

Commenter #19 is a duplicative template letter to commenter #17. For comments and responses provided, please see commenter #17.

#### **Commenter #20**

**Comment 20A:** Commenter requests the Department place reasonable suspicion in Title 15, Section 3000, definitions, in order to clarify the standard and maintain consistency throughout the Department.

**Accommodation:** None.

**Response 20A:** The Department disagrees. The definition is not specific to the California Department of Corrections and Rehabilitation, but is the standard for other law enforcement agencies as well. Inmates, staff and the public can locate the definition in any legal dictionary.

Please refer to Commenter #15, Response 15B, for a definition of reasonable suspicion as listed in legal dictionaries.

#### **Commenter #21**

Commenter #21 is a duplicative template letter to commenter #17. For comments and responses provided, please see commenter #17.

#### **Commenter #22** (note: commenter #22 sent in two letter with duplicate comments dated 7/12 & 7/30)

**Comment 22A:** Commenter references Title 15, Subsection 3173.2, stating that the change from the constitutionally defined term of probable cause to the lower, unclear and ill defined “reasonable suspicion” defies logic and puts both visitors and staff in potentially dangerous situations.

**Accommodation:** None.

**Response 22A:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too

generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Comment 22B:** Commenter states that probable cause protects an officer if the party searched is found not guilty, where reasonable suspicion does not. Commenter further states that extreme embarrassment and indignant intrusion of a pat down search by a guard, who by definition does not meet the qualification of a police officer, is inviting confrontation and lawsuits. A lesser trained guard, who has no arrest ability risks having charges brought against them when visitors/civilians feel violated by a pat down search for unarticulated suspicion.

**Accommodation:** None.

**Response 22B:** The commenter confuses the standard required for an arrest with the standard required for clothed body searches of visitors to a prison, the subject of the proposed regulatory change.

CDCR Correctional Officers are peace officers pursuant to Penal Code Sections 830.2 and 830.5, as well as California Code of Regulations, Title 15, Section 3291, Employee Law Enforcement and Peace Officer Personnel. Conversely, Transportation Safety Administration staff who conduct clothed body searches at airports are not peace officers.

**Comment 22C:** Commenter states that recently 1,000 cell phones have been discovered inside the prisons. Since visitors go through metal detectors, it is highly improbable that the cell phones came inside through visiting. Commenter states that the phones cannot come inside through quarterly packages or special purchase since these only come via third party companies. Commenter requests that all packages and personnel entering the prison be subject to search.

**Accommodation:** None.

**Response 22C:** The Department agrees that the searching of prison personnel and packages entering the institution is important. Although staff and package searches are not subject to the proposed regulatory action, the Department would like to assure the commenter that regulations and policies regarding those issues are currently in place and enforced.

The Department is unable to provide a meaningful response on the introduction of cell phones inside the prison by visitors as this information falls under a separate category from the contraband statistics mentioned in Speaker #2, Response 2D. The Department would like to add that metal detectors are not guaranteed accurate 100% of the time and the possibility of contraband being undetected still exists. Cell phones are only one type of contraband that may be attempted to be brought into an institution by a visitor.

**Comment 22D:** Commenter again states that CDCR should consider searching staff and packages that come into the prison for contraband.

**Accommodation:** None.

**Response 22D:** Please refer to Commenter #22, Response 22C.

### **Commenter #23**

Commenter #23 is a duplicative template letter to commenter #17. For comments and responses provided, please see commenter #17.

### **Commenter #24**

Commenter #24 is a duplicative template letter to commenter #17. For comments and responses provided, please see commenter #17.

**Commenter #25** (written by the Men's Advisory Counsel @ Correctional Training Facility (CTF) Soledad on behalf of the CTF Soledad inmate general population and their visitors.)

**Comment 25A:** Commenter provides definitions for probable cause, reasonable cause and reasonable suspicion. Commenter states that probable cause and reasonable cause are synonymous in definition and that the Department is attempting to create a new regulation which establishes a different legal standard of reasonable suspicion that violates applicable provisions of the California Constitution. Commenter proceeds to recite excerpts from the California Constitution, Article I, Section 1, 7(b), and 13. Commenter states that Penal Code section 5058 does not allow CDCR to overreach and impose legal standards against visitors to prisons that are different than those applicable to CDCR's own employees.

**Accommodation:** None.

**Response 25A:** The Department agrees in part. The CDCR is attempting to create a new regulation with a different search standard. However, the Department holds that a standard of reasonable suspicion for visitor clothed body searches does not violate either the California or United States Constitutions.

Please refer to Speaker #1, Response 1B for pertinent case law.

**Comment 25B:** Commenter states that CDCR has always recognized the terms probable cause and reasonable cause in the past as a basis for searching visitors. Commenter makes reference to the Department Operations Manual, specifically Section 52050, Arrest, Search and Seizure. Commenter further states that the definition for probable cause, reasonable cause and reasonable suspicion are all legal standards that require more than a bare suspicion before a search can be conducted on a visitor. The ISOR does not contain language to interpret anything other than an attempt to establish a lesser legal standard. The Notice of Proposed Regulations would only require custody staff to reasonably suspect a visitor of attempting to introduce contraband. This description constitutes nothing more than bare suspicion which in turn would make visitor searches unconstitutional.

**Accommodation:** None.

**Response 25B:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Comment 25C:** Commenter argues that the reasons stated for the proposed change is contradicted by the attempted suspension of a visitor's constitutional rights and lowering the legal standard is punitive in

nature. Commenter believes that the proposed change will subject visitors to unreasonable searches and should not be adopted.

**Accommodation:** None.

**Response 25C:** Please refer to Speaker #1, Response 1B.

**Comment 25D:** Commenter cites California case authority in *United States v. Davis* (9<sup>th</sup> cir. 1973) and *Estes v. Rowland* (1993) stating “ it was well settled that to meet the test of reasonableness, a prison visitor search must be limited in its intrusiveness as is consistent with satisfaction of the administrative need that justifies it.” Commenter further states that to allow custody staff to act on a personal whim or bare suspicion will likely lead to harassment, intimidation or the potential for inflicting psychological injury on visitors which could never be justified.

**Accommodation:** None.

**Response 25D:** Please refer to Speaker #1, Response 1B and Commenter #2, Response 2B.

#### **Commenter #26**

Commenter #26 is a duplicative template letter to commenter #17. For comments and responses provided, please see commenter #17.

#### **Commenter #27**

**Comment 27A:** Commenter recites the Initial Statement of Reasons (ISOR) and states that the proposed regulatory change to visitor searches is a burden to them and is both unnecessary and unconstitutional.

**Accommodation:** None.

**Response 27A:** The Department disagrees. The proposed regulatory change is not meant to place a burden on any individual. There should be no significant change to the visitor check-in process. The proposed regulatory change does not call for increased searches of visitors.

The proposed regulatory change was requested by the California District Attorney’s Association primarily for the purposes of legal action against those individuals who do attempt to introduce contraband into an institution.

The Department believes the change to be necessary in order to assist in the prevention of the introduction of contraband into an institution and to provide a safe, healthy and positive environment for inmates, visitors and staff alike.

In regards to the proposed regulatory change being unconstitutional, please refer to Speaker #1, Response 1B.

**Comment 27B:** Commenter states that although the proposed regulatory change is not meant to be punitive in nature, it is a burden on inmate visiting families because the reasonable suspicion standard will expose visitors to unconstitutional searches based on mere suspicion.



**Accommodation:** None.

**Response 27B:** Please refer to Speaker #2, Response 2A.

**Comment 27C:** Commenter states that the proposed regulatory change will allow staff broader excuses to harass or retaliate against inmate families for inmates having disputes on violations of their civil rights.

**Accommodation:** None.

**Response 27C:** Please refer to Speaker #1, Response 1C.

**Comment 27D:** Commenter states that the proposed regulatory change to visitor searches is unconstitutional in that although inmates have limited constitutional protection against unreasonable search and seizures, visitors maintain at all times their fourth and fourteenth amendment rights that can not constitutionally be regulated as the state intends to do.

**Accommodation:** None.

**Response 27D:** Please refer to Speaker #2, Response 2A.

**Comment 27E:** Commenter states the proposed change could allow staff to use impermissible factors, such as a person on probation or parole, or an individual's past criminal history to justify a visitor search. Commenter believes staff will harass visitors based on the above as well as in retaliation if an inmate has a dispute with a staff member, files a grievance or a lawsuit, etc.

**Accommodation:** None.

**Response 27E:** The Department disagrees with commenter. The Department reviews each visiting application on related issues such as active probation, active parole or past criminal record prior to approval for visiting. The above mentioned is not to be misconstrued as sufficient reason to suspect an individual of attempting to introduce contraband. Reasonable suspicion requires an officer to reasonably believe a person has committed, is committing or is about to commit a criminal act or violation. This, coupled with other relative facts, may be cause for a search. However, it is not the Department's intent to utilize past criminal behavior alone as reasonable suspicion.

Regarding harassment/retaliation, please refer to Speaker #1, Response 1C.

**Comment 27F:** Commenter states the Department already has adequate preventative measures in place and believes implementing the proposed regulatory change will be a violation of visitor's constitutional rights.

**Accommodation:** None.

**Response 27F:** Regarding Constitutional Rights, please refer to Speaker #2, Response 2A.

**Comment 27G:** Commenter states that claiming the proposed regulatory action is to assist District Attorneys in taking legal action against visitors who do attempt to introduce contraband into an institution is unconstitutional because it is allowing CDCR to delegate legislative action without following the process outlined with the state Attorney General's office to seek legislative action.

**Accommodation:** None.

**Response 27G:** Please refer to Speaker #2, Response 2A.

**Commenter #28**

**Comment 28A:** Commenter states that they have been on the losing end of a search with probable cause, and that the Department abuses that standard as well. Commenter questions if the Department is prepared for civil litigations because of the proposed lesser standard of reasonable suspicion. Commenter further states that the Department currently has the power to go before a Superior Court Judge and obtain a warrant using an unreliable inmate.

**Accommodation:** None.

**Response 28A:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Commenter #29**

**Comment 29A:** Commenter states that guards have never been searched, however commenter contradicts himself by adding that many ISU investigations center on staff that bring in contraband and that many of staff have been walked off of prison grounds.

**Accommodation:** None.

**Response 29A:** Please refer to Speaker #2, Response 2F.

**Comment 29B:** Commenter states that if CDCR wishes to implement intrusive searches on visitors, then it is reasonable that the same searches, including drug sniffing dogs, be implemented on Departmental staff and guards.

**Accommodation:** None.

**Response 29B:** Please refer to Speaker #2, Response 2F.

**Commenter #30**

**Comment 30A:** Commenter states they are opposed to the proposed regulatory change to Title 15, subsection 3173.2, visitor searches, probable cause to reasonable suspicion. Commenter states that the proposed change will allow guards to harass visitors if the guard dislikes the visitor or the inmate. Commenter proceeds to state that they have been subject to harassment by a guard simply because they asked the guard to call the sergeant about a product machine needing a refill. The commenter further stated that the officer was rude to her and ever since she told the Sergeant of their behavior, she has been continuously harassed by the officer. Commenter questions what will happen if this officer wants to harass her further by claiming she might have contraband on her person and demands that she be searched?

**Accommodation:** None.

**Response 30A:** Regarding staff harassment please refer to Commenter #2, Response 2B.

In addition, the remainder of the comment although regarding some aspect or aspects of the subject proposed regulatory action and requiring summarizing pursuant to Government Code Section 11346.9(b)(3), is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Comment 30B:** Commenter states that all staff should be subject to the same scrutiny measures that visitors are subjected to, i.e. metal detectors and searching of anything they bring into the Institution.

**Accommodation:** None.

**Response 30B:** Please refer to Speaker #2, Response 2F.

**Comment 30C:** Commenter states the proposed regulatory change is in violation of the Fourth Amendment in that you must obtain a search warrant and must have probable cause to search someone.

**Accommodation:** None.

**Response 30C:** Please refer to Commenter #1, Response 1A.

**Comment 30D:** Commenter questions why visitors are subjected to such an extensive search and staff is not?

**Accommodation:** None.

**Response 30D:** Please refer to Speaker #2, Response 2F.

**Comment 30E:** Commenter questions if cell phones are such a problem, i.e. the Warden at CSP-Solano stating to the Senate Rules Committee, 35-50 cell phones being smuggled into prison by staff members, most of them non-officers, why are visitors the only ones subject to searches?

**Accommodation:** None.

**Response 30E:** The proposed regulatory action does pertain only to the searches and inspections of visitors, however, the Department assures commenter that there are separate regulations governing the searches and inspections of employees.

**Comment 30F:** Commenter wonders how visitors can smuggle cell phones into the prison when they have to go through metal detectors. Commenter states that countless media reports have shown high numbers of California prison staff have been caught bringing contraband inside the prison, yet staff do not get searched. Commenter further states that there will be many lawsuits filed if this proposed regulation passes and there are strip searches.

**Accommodation:** None.

**Response 30F:** Please refer to Commenter #22, Response 22C regarding cell phones. Please refer to Commenter #2, Response 2A in regards to strip searches. Please refer to Speaker #2, Response 2F in regards to staff searches.

**Comment 30G:** Commenter states that she is opposed to the proposed regulatory change due to it being in violation of the Fourth Amendment and does encourage the Department to search staff the same way visitors are searched. Commenter believes searching staff will eliminate a lot of the contraband introduced into the prisons.

**Accommodation:** None.

**Response 30G:** Regarding violation of Fourth Amendment, please refer to Speaker #2, Response 2A. Regarding staff searches, please refer to Speaker #2, Response 2F.

**Comment 30H:** Commenter states that she is in fear of retaliation of this letter and will be forwarding a copy to the Legislature.

**Accommodation:** None.

**Response 30H:** Please refer to Speaker #1, Response 1C.

### **Commenter #31**

**Comment 31A:** Commenter expresses their opposition to the proposed regulatory change of probable cause to reasonable suspicion. Commenter states the risk of harassment suits are great and the retaliation by guards is too tempting. Commenter understands that visitors can file citizen complaints but worry about doing so. Why is the Department giving the guards another format to use against visitors?

**Accommodation:** None.

**Response 31A:** Please refer to Speaker #1, Response 1C.

**Comment 31B:** Commenter states that prison guards are not trained police and don't have the ability to arrest people.

**Accommodation:** None.

**Response 31B:** Please refer to Commenter #22, Response 22B.

**Comment 31C:** Commenter states that cell phones are not brought into the prison by visitors. Commenter further states that visitors walk through metal detectors and are checked thoroughly without the embarrassment and indignant intrusion of a pat down search and privacy invasion.

**Accommodation:** None.

**Response 31C:** Please refer to Commenter #22, Response 22C.

**Comment 31D:** Commenter states everyone knows how cell phones and contraband get inside the prison. Why is CDCR so afraid to have staff and guards checked and searched?

**Accommodation:** None.

**Response 31D:** In regards to staff searches, please refer to Speaker #2, Response 2F.

The Department encourages the commenter to report any information they may have regarding cell phones or other contraband being introduced into CDCR facilities.

**Comment 31E:** Commenter states that if CDCR was serious about changing the real facts, drug dogs would be allowed to conduct unscheduled searches of all staff, visitor and guard vehicles, lunch boxes and packages.

**Accommodation:** None.

**Response 31E:** This comment is outside the scope of the proposed regulatory action, regarding visitor searches.

**Comment 31F:** Commenter questions if harassment and retaliation will occur for writing the comment letter.

**Accommodation:** None.

**Response 31F:** Please refer to Commenter #2, Response 2B.

**Comment 31G:** Commenter requests that CDCR not change the standards the Supreme Court has set and what might become a potential legal liability.

**Accommodation:** None.

**Response 31G:** Please refer to Speaker #1, Response 1B.

### **Commenter #32**

**Comment 32A:** Commenter states she objects to the proposed regulatory change of probable cause to reasonable suspicion. Commenter states she visits every weekend and is subjected to demeaning treatment as it is, she can't imagine what a nightmare visitors would face if the proposed change is adopted. Commenter wants to know why visitors must endure such humiliation just to see their loved ones.

**Accommodation:** None.

**Response 32A:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Comment 32B:** Commenter states that visitors have to walk through metal detectors that are set very sensitive, shake out their hair, lift their pant legs, empty their pockets, take their shoes off and show the bottom of their feet and basically wear all black because they are scrutinized on any other color they may wear.

**Accommodation:** None.

**Response 32B:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Comment 32C:** Commenter states that visitors do everything in their power just to make it through visiting. Commenter further states that visitors do not bring cell phones, tins of tobacco or large metal objects inside, visitors can barely get through to visit themselves without all the extra stuff. Commenter states that she has been told by convicts and ex-convicts that officers are the ones bringing in the contraband. Correctional officers who go to work inside the prison are not searched. If there was anything that visitors would smuggle in, it would be food because the inmates are starving.

**Accommodation:** None.

**Response 32C:** Please refer to Speaker #2, Response 2F regarding staff searches.

In addition, CDCR encourages commenter to report any information they may have on staff and the introduction of contraband.

**Comment 32D:** Commenter states that it is not fair to scrutinize families who are trying to keep their loved ones connected through precious visits or increase the humiliation in addition to what visitors already deal with every weekend.

**Accommodation:** None.

**Response 32D:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Comment 32E:** Commenter states that reasonable suspicion is anybody's interpretation. An argumentative person, a first time visitor, a person of color, everyone could be suspicious.

**Accommodation:** None.

**Response 32E:** The Department disagrees. Reasonable suspicion is a legal standard that applies to law enforcement agencies across the country. The Department assures commenter that correctional officers are trained professionals that are fully capable of determining what meets the definition of reasonable suspicion. For the definition of reasonable suspicion as listed in legal dictionaries see Commenter #15, Response 15B.

**Comment 32F:** Commenter requests for the Department to please see visitors as human beings and try to understand the hardships visitors already face. Visitors are not criminals. Please consider this when deciding on the proposed change.

**Accommodation:** None.

**Response 32F:** The Department acknowledges that visitors are important to the lives of inmates while they are incarcerated, as well as providing a support system to them while on parole. However, the Department is responsible to provide a safe, positive and healthy visiting environment that is free of contraband for inmates, visitors and staff alike. The Department has considered all aspects in the proposed regulatory change.

**Commenter #33**

**Comment 33A:** Commenter states they are against the proposed regulatory change to Title 15, Subsections 3173.2(a) and 3173.2(g)(2) which would permit invasive searches of prison visitors based on reasonable suspicion rather than probable cause. Commenter states the proposed language does not distinguish between different types of searches and gives the perception that a strip search would be allowed under the low legal standard of reasonable suspicion. Commenter further states that Title 15, Section 3176, which is not a section to be changed, already recognizes unclothed body searches must be supported by probable cause. The proposed change to Subsections 3173.2(a) and 3173.2(g)(2) would be in direct conflict with Section 3176.

**Accommodation:** None.

**Response 33A:** California Code of Regulations, Title 15, Section 3176 is not subject to the proposed regulatory action and will remain in effect. The proposed regulatory change concerns clothed body searches of visitors.

**Comment 33B:** Commenter states additional objection to the proposed regulatory change on the basis of severe overcrowding crisis in the prison system. In light of the recently enacted out of state transfer program, it more important than ever to ensure fair processing and treatment of CDCR visitors.

**Accommodation:** None.

**Response 33B:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Comment 33C:** Commenter expresses their concern over the proposed regulatory changes making no distinction in types of searches conducted. Commenter provides various quotes from relevant case law decisions on strip searches and body cavity searches. Commenter states the proposed change is a violation of the Fourth Amendment.

**Accommodation:** None.

**Response 33C:** Regarding strip searches, please refer to Commenter #2, Response 2A. Regarding violation of Fourth Amendment, please refer to Speaker #2, Response 2A.

**Comment 33D:** Commenter states in light of CDCR's ongoing practice of searching inmates both before and after a visit, it would be hard to make the requisite showing that intrusive searches on visitors are necessary to protect the safety and security of the Institutions. Commenter states that if the proposed

regulations are adopted, it will expose CDCR to litigation and financial responsibility regarding these searches.

**Accommodation:** None.

**Response 33D:** Regarding reason for proposed regulatory change refer to Speaker #1, Comment 1A. Regarding the comment on litigation and financial responsibility, the Department is unable to formulate a meaningful response due to comment/objection being too generalized or personalized.

**Comment 33E:** Commenter states visitors are important to an inmate's successful reintegration into society which assist in reducing recidivism rates. If the proposed regulatory change is adopted, the above stated could be in jeopardy. Commenter recommends that CDCR transition to re-entry programming to include programs designed to provide offenders with the skills necessary to successfully integrate into society upon release from prison.

**Accommodation:** None.

**Response 33E:** The Department agrees with commenter in that visits are an important factor to an inmate's successful reintegration into society, which in turn assists in reducing recidivism rates. However, the Department disagrees with the commenter in that the proposed regulatory action, if adopted, would jeopardize the above statement. The Department's intent of the proposed regulatory change includes the prevention of the introduction of contraband into the institutions to assist in promoting a safe, healthy and positive visiting environment for the inmates, visitors and staff alike. This in turn, will reinforce lawful behavior and successful reintegration into society.

The Department thanks commenter on the recommendation for re-entry facilities and training. However, the Department notes that the comment is not within the scope of what the proposed regulatory action constitutes.

**Comment 33D:** Commenter states there are dire consequences for prisoners who do not have visitors, including the risk of being transferred out of state and increased risk of recidivism, and it is more important than ever to protect the constitutional rights of visitors. Commenter urges that the proposed regulatory change be rejected based on the above.

**Accommodation:** None.

**Response 33D:** The Department contends that the comment on out of state transfers is not sufficiently related to the proposed regulatory action. The Department agrees that visiting in an environment that reinforces lawful behavior can contribute to reducing recidivism

#### **Commenter #34**

**Comment 34A:** Commenter states that the thought of being strip searched while going to visit a loved one is unreasonable. Commenter feels that CDCR is treating visitors as though they were inmates or criminals.

**Accommodation:** None.

**Response 34A:** Please refer to Commenter #2, Response 2A.



**Comment 34B:** Commenter states they drive over 3 hours to visit their loved one, why would they risk the visit by bringing in contraband?

**Accommodation:** None.

**Response 34B:** The Department asserts that visitors do attempt to bring contraband into CDCR institutions. Please refer to Speaker #2, Response 2D.

**Comment 34C:** Commenter states the Department preaches rehabilitation, yet they turn around and create an obstacle such as strip searches to hinder visiting and prevent inmates from doing better.

**Accommodation:** None.

**Response 34C:** Please refer to Commenter #2, Response 2A.

**Comment 34D:** Commenter states that CDCR would take the time to stop and look at their own prison officials rather than giving visitors strip searches, they would turn up more results. The problem is not from the outside, but from your own guards.

**Accommodation:** None.

**Response 34D:** Please refer to Speaker #2, Response 2F.

**Comment 34E:** Commenter states that making strip searches mandatory with probable cause and reasonable suspicion is a complete violation of their constitutional rights. Commenter will not stand for some stranger to grope them based on suspicion when in reality the person searching them is a pervert.

**Accommodation:** None.

**Response 34E:** Please refer to Commenter #2, Response 2A.

**Comment 34F:** Commenter suggests the Department think the proposed regulatory action through; it will only open CDCR up for litigation, something CDCR is not prepared to deal with.

**Accommodation:** None.

**Response 34F:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Commenter #35** (group comment, 5 persons)

**Comment 35A:** Commenter requests that CDCR define reasonable suspicion and list it in Title 15, Section 3000, definitions.

**Accommodation:** None.

**Response 35A:** Please refer to Commenter #20, Response 20A.

**Comment 35B:** Commenter suggests that each staff member will interpret the standard of reasonable suspicion differently and will apply it too broadly.

**Accommodation:** None.

**Response 35B:** The Department assures commenter that correctional officers are trained professionals that are fully capable of determining what meets the definition of reasonable suspicion. For the definition of reasonable suspicion as listed in legal dictionaries see Commenter #15, Response 15B.

**Comment 35C:** Commenter states it would be fair notice for CDCR to include the law supporting the change of the standard from probable cause to reasonable suspicion.

**Accommodation:** None.

**Response 35C:** Please refer to Speaker #1, Response 1B.

### **Commenter #36**

**Comment 36A:** Commenter states the proposed change in D.O.M. regarding strip search standards changing from probable cause to reasonable suspicion is a violation of visitor's privacy rights.

**Accommodation:** None.

**Response 36A:** Please refer to Commenter #2, Response 2A. This proposed change is not to the Department Operations Manual, but rather to CDCR regulations in the California Code of Regulations, Title 15.

**Comment 36B:** Commenter states that visitors are already harassed and this change will make it worse. Visitors will have to worry about what they are doing and how they look at all times, hoping not to be called suspicious by a correctional officer. Who is to say what reasonable suspicion is from one officer to another.

**Accommodation:** None.

**Response 36B:** In regards to reasonable suspicion determination, please refer to Commenter #35, Response 35B. Regarding harassment, please refer to Commenter #2, Response 2B.

**Comment 36C:** Commenter states one day an officer will let you visit and the next day another officer has a problem with how you look, or whatever is bothering them at the time, and they won't let you visit unless you submit to a strip search. This is wrong. Officers already change what is acceptable to wear into the prison. They should update this on their message for those who call and check on visiting information. They should also let inmates know so they can send letters home before a visitor comes in and gets turned away. Visitors should not be treated like they did something wrong, we are not criminals. Visitors come to see incarcerated ones to lift their spirits. We should not be subject to unreasonable actions or rudeness in order to get a visit. This makes it very discouraging to come back and visit. Inmates are locked up to pay for their crime. I'm sure one who receives a visit is far better off than one who does not. Don't treat visitors like criminals if you don't want bad attitudes from the few inmates who receive visits.

**Accommodation:** None.

**Response 36C:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment. However, the Department does agree that visitors to its institutions should be treated respectfully.

**Commenter #37**

**Comment 37A:** Commenter states the proposed regulatory change to Title 15, Subsections 3173.2(a) and 3173.2(g)(2) are a complete infringement upon the Fourth Amendment. Commenter further states CDCR has made no effort to show that this reduction in liberty is warranted.

**Accommodation:** None.

**Response 37A:** In regards to Fourth Amendment infringement, please refer to Speaker #2, Response 2A. In regards to reason for proposed regulatory change, please refer to Speaker #1, Response 1A. For statistical data and examples on visitors and the introduction of contraband, please refer to Speaker #2, Response 2D.

**Comment 37B:** Commenter makes reference to the ISOR, stating that the need to prevent the introduction of contraband is an ongoing problem and probable cause is and has been the legal standard for searches. CDCR is offering no facts as to explain why it is necessary to lower the standard used to initiate a search of a visitor's person, vehicle or personal property.

**Accommodation:** None.

**Response 37B:** Please refer to Speaker #1, Response 1A.

**Comment 37C:** Commenter states the ISOR contains no mention of contraband or any decrease in the effectiveness of the probable cause standard. Furthermore, the ISOR does not give any statistics for the introduction of contraband into the prison system. Commenter questions if most contraband comes in via visitors who empty their pockets, are visually scanned and pass through a metal detector each and every time they visit? Or, is it introduced by another route? Because the ISOR contains no mention of any of these reasons, there must not be a need for the change.

**Accommodation:** None.

**Response 37C:** The Department disagrees. The ISOR clearly states the reason for the proposed regulatory change. The statistical information provided in the public comment responses was not available to us at the time the ISOR was drafted, nor is it required to be placed into the ISOR. The Department has obtained the listed statistical information to support the proposed regulatory change.

Please refer to Speaker #2, Response 2D regarding statistics on visitors introducing contraband. Please refer to Speaker #1, Response 1A regarding information on reason for the proposed regulatory change.

**Comment 37D:** Commenter states that CDCR is obligated to select the least invasive means of achieving its public safety objectives.

**Accommodation:** None.

**Response 37D:** The Department contends that any person coming onto the property of an institution/facility shall be subject to inspection as necessary to ensure institution/facility security, including the prevention of the introduction of contraband. This means that departmental staff will utilize the least invasive means of searches available in conformity with proper legal standards and standard correctional practice across the United States.

**Comment 37E:** Commenter states the ISOR does not describe any alternatives which were considered in regards to reason for the change. CDCR has not even attempted to show why probable cause, which is less invasive to visitor's right to privacy, is not sufficient to protect the public.

**Accommodation:** None.

**Response 37E:** The Department is not required to disclose other alternatives considered but assures commenter that no other alternative has proven to be as effective to accomplish the objective or reason for the change. The Department certifies that no reasonable alternatives to the proposed regulatory change would be more effective in carrying out the purpose of this action or would be as effective as and less burdensome to affected private persons than this action proposed. The Department notes that the proposed regulatory change is at the request of the District Attorney's Association in order to assist the D.A.s to take legal action against those who attempt to introduce contraband into the institution. There is no other alternative to achieve the desired affect other than the Department coming into conformity with the law and standard correctional practice.

The Department would like to assure the commenter that no significant change to the visitor processing is anticipated. The Legal standard did not change; reasonable suspicion has always been the requirement by law. The Department has had the standard of reasonable suspicion in the past. This standard has been accepted by the courts as the appropriate standard for searching of visitors to prisons, including an unclothed body search (please refer to Speaker #1, Response 1B for more information on case precedence).

**Comment 37F:** Commenter refers to the ISOR in that it does not delineate the differences between probable cause and reasonable suspicion as reasonable suspicion is used outside of the prison system. CDCR has not attempted to show if searches conducted under the lesser standard of reasonable suspicion will be the same as searches conducted under probable cause. Is there a legal precedent that justifies this?

**Accommodation:** None.

**Response 37F:** The Department assures the commenter that visitors will endure no significant change in processing with the standard of reasonable suspicion in place. However, a reasonable suspicion standard will aid in the prosecution of cases where contraband was discovered during a clothed body search. In addition, please refer to Speaker #1, Response 1B regarding prior case precedence.

**Comment 37G:** Commenter states that visitors are not prisoners and any reduction in the Fourth Amendment rights should be scrutinized and thoroughly explained. The CDCR has not shown the public that the proposed regulatory changes are necessary and that less burdensome alternatives do not exist.

**Accommodation:** None.

**Response 37G:** Regarding Constitutional Rights, please refer to Speaker #2, Response 2A. Regarding search alternatives, please refer to Commenter 37, Response 37E.

**Commenter #38**

**Comment 38A:** Commenter states they do not support the proposed regulatory change to Title 15, Section 3173.2, visiting searches. Commenter states the change only serves as added protection against those who are not supervised as it is and have an alarming amount of power over visitors already.

**Accommodation:** None.

**Response 38A:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Comment 38B:** Commenter states the proposed change would take away from any privacy or rights of visitors who have not broken the law.

**Accommodation:** None.

**Response 38B:** In regards to a violation of rights, please refer to Speaker #2, Response 2A.

**Comment 38C:** Commenter states that visiting is already taxing and stressful on an individual with all the rules that must be navigated. Adding the possibility of being strip searched will only serve to alienate visitors. Visitors will feel violated and discouraged, causing more harm to the inmates. This proposed change leads one to believe reducing visits is CDCR's goal. This is just another form of cruel and unusual punishment.

**Accommodation:** None.

**Response 38C:** Unclothed body searches (strip searches) are not the subject of this change to regulation. In addition, the Department would like to express to commenter that reducing inmate visits is not a goal. The Department encourages visitors to come see their loved ones as it helps to promote a positive and rehabilitative environment for the inmate. One of the Department's goals with the proposed regulatory change is to prevent the introduction of contraband into the institutions in order to provide a safe, healthy and positive environment for inmates, visitors and staff alike. Contraband undermines successful rehabilitation.

**Comment 38D:** Commenter states it is a proven fact that contraband makes it into the prisons largely from other sources. Surely small things may get inside through visitors, but the vast majority comes in via prison staff and packages. It would not be worth the risk for a visitor to attempt to introduce contraband inside the prison. Commenter believes the proposed change is out of line and unnecessary.

**Accommodation:** None.

**Response 38D:** Regarding statistics on visitors and the introduction of contraband, please refer to Speaker #2, Response 2D. Regarding reason for the proposed regulatory change, please refer to Speaker

#1, Response 1A. If commenter has information regarding the introduction of contraband into CDCR facilities, the Department encourages them to report it.

**Comment 38E:** Commenter requests that CDCR not further intrude on their lives and visits with their loved ones. The proposed regulatory change only serves to further alienate the public's opinion on law enforcement and one's rights being stolen day after day. This is a recipe for disaster.

**Accommodation:** None.

**Response 38E:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment

**Comment 38F:** Commenter would like to know figures for strip searches and contraband found?

**Accommodation:** None.

**Response 38F:** The comment does not address the substance of the proposed regulatory change which is search standards for clothed body searches. Please refer to Commenter #2, Response 2A regarding strip searches.

### **Commenter #39**

**Comment 39A:** Commenter states she has been visiting for 7 years. If there was a time that she was not nervous upon check in, she cannot remember. How will an officer know if a visitor is just nervous about entering? What if a visitor is upset about being turned away because of the clothing they are wearing? Visitors are entering a place where they can be taken hostage and CDCR might not be able to help. Visitors don't know what prisoners did to get incarcerated. It's pretty scary. How will officers know the difference? Are the officers going to receive special training on what reasonable suspicion is?

**Accommodation:** None.

**Response 39A:** The Department and correctional staff understand that visitors can be nervous upon entering an institutional setting especially for the first time. The Department would like to assure commenter that correctional officers are highly trained professionals that are fully capable of determining what meets the definition of reasonable suspicion and generally are understanding of visitors that may be nervous. The ability to search based on reasonable suspicion will increase security for visitors by reducing the risk of weapons and other dangerous contraband being brought into the institutions by visitors.

For the definition of reasonable suspicion as listed in legal dictionaries please see Commenter #15, Response 15B.

**Comment 39B:** Commenter feels the proposed regulatory change is a violation of her rights.

**Accommodation:** None.

**Response 39B:** Please refer to Speaker #2, Response 2A.

**Comment 39C:** Commenter states that visitors already go through metal detectors that are set very sensitive. Why not get drug smelling dogs? Commenter would rather have a dog sniff her than an officer who has no training strip search her.

**Accommodation:** None.

**Response 39C:** This comment does not address the substance of the proposed regulatory change which is clothed body searches.

**Comment 39D:** Commenter states that having a family member in prison is a horrible thing and requests the Department not make it even harder by adopting the proposed change.

**Accommodation:** None:

**Response 39D:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

#### **Commenter #40**

**Comment 40A:** Commenter states the notion that increased contraband in the prisons is due to visitors smuggling in cell phones, etc. is nothing more than a misguided attempt to deflect attention away from the real source of the problem. Commenter refers to prison staff including correctional officers themselves as the real problem.

**Accommodation:** None.

**Response 40A:** This comment is outside the scope of the proposed regulatory action. However, the Department notes that cell phones are not specifically mentioned in the Initial Statement of Reasons. If the commenter has information regarding the introduction of cell phones into a CDCR institution, the Department encourages them to report it.

**Comment 40B:** Commenter states that the idea of visitors deceiving metal detectors and the virtual strip search they must endure upon visiting is absurd. Commenter understands that small amounts of drugs or other miniscule contraband may come via visitors; however, they can not be the real source of it.

**Accommodation:** None.

**Response 40B:** The Department acknowledges that visitors are not the sole source of contraband into the institutions. However, visitors do contribute to the on going problem including the introduction of large amounts of drugs along with other items currently not authorized inside the institutions. The Department recognizes that metal detectors are not always 100% accurate and the possibility of contraband getting into the institution does exist.

For more information on visitors and the introduction of contraband, please refer to Speaker #2, Response 2D.

**Comment 40C:** Commenter questions why prison officials are so reluctant to introduce similar safeguards that apply to all prison personnel entering or leaving the prisons. Commenter believes the answer is obvious.

**Accommodation:** None.

**Response 40C:** The Department is uncertain on what message the commenter is trying to convey, therefore no meaningful response can be formulated.

Please refer to Speaker #2, Response 2F regarding CDCR employee searches.

#### **Commenter #41**

**Comment 41A:** Commenter states that she strongly objects to the proposed regulatory change to Title 15, Subsection 3173.2. Commenter contends that to lower the standard of the constitutionally understood and clearly defined probable cause to a lower unclear and ill defined term of reasonable suspicion defies logic and puts both staff and visitors in potentially dangerous situations.

**Accommodation:** None.

**Response 41A:** Please refer to Speaker #2, Response 2A regarding constitutional rights. For a definition of reasonable suspicion, please refer to Speaker#1, Response 1C.

**Comment 41B:** Commenter states the standard of reasonable suspicion will invite inexperienced guards to conduct more frequent strip searches of visitors. A strip search is degrading and traumatizing and rarely turns up any contraband. Even extremely rare cases where contraband is found, the quantities have been miniscule.

**Accommodation:** None.

**Response 41B:** The Department notes that strip searches are not subject to the proposed regulatory change.

Please refer to Commenter #2, Response 2A regarding strip searches. Regarding visitors introducing contraband please refer to Speaker #2, Response 2D.

**Comment 41C:** Commenter states that “correctional officer” does not meet the definition of a “peace officer” and is inviting confrontation and lawsuits.

**Accommodation:** None.

**Response 41C:** Please refer to Commenter #22, Response 22B.

**Comment 41D:** Commenter states she has experienced guards that are rude, intimidating and abuse their authority beyond the limits. A Sergeant who did not have the authority terminated her visit with no clear reason as to why. Commenter had traveled over 400 miles for her visit. She complained to the Warden, resulting in restored visits and all related disciplinary write ups removed from the inmate’s file. The Sergeant has been rude to her ever since. This ruling will only allow staff to harass visitors such as the Sergeant has done. CDCR changes the rules to fit their needs at the moment.



**Accommodation:** None.

**Response 41D:** Regarding staff harassment please refer to Commenter #2, Response 2B.

In addition, the remainder of the comment although regarding some aspect or aspects of the subject proposed regulatory action and requiring summarizing pursuant to Government Code Section 11346.9(b)(3), is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Comment 41E:** Commenter states it is widely known that vendors and guards bring the majority of contraband inside the Institutions, not the friends and family members of the prisoner. The focus should be on the solution of the problem, not one that sidesteps the problem.

**Accommodation:** None.

**Response 41E:** This comment is outside the scope of the proposed regulatory action. However, if the commenter has information regarding the introduction of contraband into a CDCR institution, the Department encourages them to report it.

**Comment 41F:** Commenter states the metal detectors that visitors pass through are set extremely sensitive that bra hooks set them off. It would be impossible for a visitor to get cell phones or weapons through the metal detectors.

**Accommodation:** None.

**Response 41F:** Please refer to Commenter #40, Response 40B.

**Comment 41G:** Commenter states the Supreme Court has ruled on cases involving probable cause vs. reasonable suspicion to everyone's satisfaction years ago. Probable cause protects an officer if the party is found not guilty, reasonable suspicion does not. An untrained guard, who has no authority to arrest, does not have such protection and risks being sued by visitors who do not leave their constitutional rights at the gate.

**Accommodation:** None.

**Response 41G:** Please refer to Commenter #22, Response 22B in regards to correctional officers and peace officer authority. Please refer to Commenter #1, Response 1A regarding relevant case precedence.

**Comment 41H:** Commenter requests to know why prison staff with large lunch boxes and packages can simply sail into the prisons when it is known the vast majority of contraband comes in through them or to packages sent to them, not by visitors or packages sent to inmates.

**Accommodation:** None.

**Response 41H:** Please refer to Speaker #2, Response 2F.

### **Commenter #42**

Commenter #42 is a duplicative template letter to commenter #41. For comments and responses provided, please see commenter #41.

### **Commenter #43**

**Comment 43A:** Commenter is against lowering the standard of probable cause to search visitors. If the reason is truly to prevent the introduction of contraband into the institutions, commenter suggest the Department start with strip searching the guards and searching packages delivered to unknown names that guards are signing for.

**Accommodation:** None.

**Response 43A:** Please refer to Speaker #2, response 2F.

**Comment 43B:** Commenter states that it is imperative the Department hire correctional officers of the highest quality. Better quality of guards will create better relationships with visitors.

**Accommodation:** None.

**Response 43B:** This comment is outside the scope of the proposed regulatory action. However, the Department does seek to recruit qualified candidates for its correctional officer positions.

**Comment 43C:** Commenter states that correctional officers sell cigarettes, cell phones, drugs and other contraband. What kind of environment is that for inmates who already have problems? If family were bringing in the contraband to inmates, then we should be prosecuted. Don't let visitors suffer for the officer's behavior. Commenter suggests the Department check officers before blaming others.

**Accommodation:** None.

**Response 43C:** This comment is outside the scope of the proposed regulatory action. However, if the commenter has information regarding the introduction of cell phones into a CDCR institution, the Department encourages them to report it.

### **Commenter #44**

**Comment 44A:** Commenter states there is no reason for the proposed regulatory change other than to give correctional officers the right for unjust searches.

**Accommodation:** None.

**Response 44A:** Please refer to Speaker #1, Response 1A.

**Comment 44B:** Commenter states inmate families are not bringing in the contraband to inmates. It is impossible for visitors to get past all the security. This is just another way to stop visiting. No visitor should be put through this very emotional and highly intrusive situation.

**Accommodation:** None.

**Response 44B:** The Department disagrees. Although visitors are not the sole source of the issue at hand, they do contribute to the on going problem with the introduction of contraband into the institutions.

Please refer to Speaker #2, Response 2D for statistical data on visitors and the introduction of contraband.

**Comment 44C:** Commenter believes the proposed regulatory change allows officers to search a visitor just on a whim. A strip search or cavity search is ridiculous at best.

**Accommodation:** None.

**Response 44C:** Please refer to Commenter #2, Response 2A.

**Comment 44D:** Commenter states if the proposed regulatory change is adopted, it would be abused to the fullest. Commenter is totally against the proposed change stating it violates the moral, ethical and common decency values that we all should feel.

**Accommodation:** None.

**Response 44D:** Although part of the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Regarding abuse of proposed regulatory change, refer to Commenter #2, Response 2B.

#### **Commenter #45**

Commenter #45 is a duplicative template letter to commenter #41. For comments and responses provided, please see commenter #41.

#### **Commenter #46**

**Comment 46A:** Commenter states she is responding to the proposed regulatory change to visitor searches from experience of a search with no suspicion. She states she has never had anything to do with contraband. She is a 60 year old, highly respected person in her community and does not resemble the profile in any stretch of the imagination. Commenter further states that out of nowhere the visiting Sergeant ordered her to be strip searched or her visits would be terminated indefinitely. Out of fear, she submitted. The search left her terrorized, humiliated and degraded. It is a painful experience for her to recall. The end result produced no contraband.

**Accommodation:** None.

**Response 46A:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

The Department would like to inform the commenter that there are Departmental regulations and operational procedures in place stating in part, “employees will be courteous and professional in their dealings with inmates, fellow employees, visitors and members of the public”. If the commenter or other member of the public experiences such treatment, they are encouraged to file a citizen’s complaint to the Institution Head where the correctional officer is employed according to the process in Title 15, Subsection 3391(c)

**Comment 46B:** Commenter states that on numerous occasions she has been harassed for nit picky reasons. She states that she tolerates this because it is somewhere in the rules. Strip searching without probable cause is not in the rules and is unacceptable in America.

**Accommodation:** None.

**Response 46B:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

The Department further states that strip searches are not subject to the proposed regulatory change. Please refer to Commenter #2, Response 2A.

**Comment 46C:** Commenter questions if the State of California is looking for more lawsuits. Commenter further questions if the First Amendment no longer in effect and is this America.

**Accommodation:** None.

**Response 46C:** The Department is unclear as to what message the commenter is trying to convey in regards to the First Amendment and visitor searches. The Department can assert that the proposed regulatory change has no impact on a citizen’s First Amendment rights, and complies with Constitutional safeguards contained in the Fourth Amendment against unreasonable search and seizure.

**Comment 46D:** Commenter states the idea of giving the correctional officers that are hired out of desperation because of overcrowded prisons more power to act out their prejudices, anger and whatever psychological issues they suffer with is simply mad.

**Accommodation:** None.

**Response 46D:** This comment is outside the scope of the proposed regulatory action.

**Comment 46E:** Commenter believes the proposed regulatory change is asking for more conflict between visitors, prison employees and inmates. Inmates will rise up to protect their families and there will be more chaos.

**Accommodation:** None.

**Response 46E:** Although the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too

generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Commenter #47**

**Comment 47A:** Commenter refers to Title 15, Section 3173.2, searches and inspections of visitors. Commenter opposes proposed regulatory change of eliminating probable cause required to inspect a prison visitor for suspicion of carrying contraband into a state prison facility, and the adoption reasonable suspicion. Under current regulatory law, visitors are already subject to extreme invasions of privacy, up to and including the use of strip searches. A strip search can be conducted upon a mere showing that an authorized prison official has probable cause to believe a visitor is carrying contraband.

**Accommodation:** None.

**Response 47A:** Please refer to Commenter #2, Response 2A.

**Comment 47B:** Commenter states that CDCR is attempting to further relax the relatively liberal standard of probable cause to reasonable suspicion in order for prison staff to gain greater leeway to engage in highly invasive searches of free citizens. In contrast to the probable cause standard, the United States Supreme Court has noted that reasonable suspicion is established with less reliable information than is required to meet the test of probable cause, and that reasonable suspicion can be established by considerably less than proof of wrong doing by a preponderance of the evidence.

**Accommodation:** None.

**Response 47B:** The Department disagrees. The proposed regulatory change is not to be misconstrued as leeway for an increase in searches on visitors. The proposed change is anticipated to have no major impact on the visitor processing already in place. The primary impact from the proposed change will come by way of legal action against those persons who do attempt to introduce contraband into an institution, and their successful prosecution.

The Department would like to thank the commenter for their information on reasonable suspicion, and would like to refer commenter to Speaker #1, Response 1B in regards to relevant case decision directly related to the proposed regulatory change of probable cause to reasonable suspicion.

**Comment 47C:** Commenter questions whether there is no other reasonable alternative to the proposed regulatory change. Commenter believes there are reasonable alternatives such as monitor and search all prisoners after all visits. There is no justification for such an invasion on a visitor's privacy or any reasonable basis for inspecting a visitor following a visit.

**Accommodation:** None.

**Response 47C:** Please refer to Commenter #37, Response 37E regarding other search alternatives.

The Department would like to inform commenter that current visiting protocol includes all inmates being monitored during their visit and subjected to an unclothed body search after their respective visit.

**Comment 47D:** Commenter states it should be noted that visitors do not leave their constitutional rights at the steps of the prison. A visitor's rights are retained, including the right to privacy. In fact, "California accords privacy the constitutional status of an inalienable right, on a par with defending life

and possessing property.” Thus, anyone attempting to abridge the right to privacy must do so with clear and probable cause.

**Accommodation:** None.

**Response 47D:** Please refer to Speaker #2, Response 2A.

**Comment 47E:** Commenter states the proposed regulatory change would unnecessarily subject California citizens to the potential for extreme humiliation by prison officials without reasonable controls. Commenter believes the objective of eliminating contraband can be addressed through better management of prisoners and prison officials, thus providing no rational basis for relaxing the standard of Title 15, Section 3173.2. Commenter notes that prison officials, guards and employees are not subjected to any screening upon entry and exit from the institutions.

**Accommodation:** None.

**Response 47E:** Part of the above comment/objection does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Regarding employee searches, please refer to Speaker #2, Response 2F.

**Comment 47F:** Commenter refers to numerous California case decisions in stating it is held that the test for regulating prison visitation involves a balance of legitimate governmental interest with constitutional rights of the prisoner. The proposed regulatory change affects non-prisoners. The constitutional rights of the visitor should be given greater deference. The probable cause standard is recognized by California law. There is no penalogical interest for relaxing the already liberal standard with respect to free citizens. The proposed regulatory actions are unnecessary and place an unnecessary burden on visitors. The burden will only deter visitors and harm family relationships which are crucial to prisoner rehabilitation. Commenter reiterates their strong opposition to the proposed regulatory change.

**Accommodation:** None.

**Response 47F:** Please refer to Speaker #2, Response 2A regarding relevant case decisions.

The Department’s intention of the proposed regulatory action is not to deter or place a burden on any visitor. A primary function of CDCR is to effectively reduce and eliminate the threat of any unauthorized contraband into the institutions in order to provide for a safe, healthy and positive visiting environment for the inmates, visitors and staff alike. The proposed standard will assist local District Attorneys in prosecuting those visitors who attempt to introduce contraband.

#### **Commenter #48**

**Comment 48A:** Commenter has been a visitor for approximately 10 years and can see no reason why the proposed regulatory change of probable cause to reasonable suspicion should be adopted. Commenter questions whose judgment will determine reasonable suspicion and further states that the law says probable cause, it should remain the law of the land.

**Accommodation:** None.

**Response 48A:** Regarding reason for the proposed regulatory change, please refer to Speaker #1, Response 1A. Regarding probable cause as law of the land, please refer to Speaker #1, Response 1B.

**Comment 48B:** Commenter states most if not all of the contraband is brought into the institutions by the correctional officers. The Department's refusal to believe this is completely ignorant.

**Accommodation:** None.

**Response 48B:** This comment is outside the scope of the proposed regulatory action.

**Comment 48C:** Commenter states that most of the staff in visiting are respectful; however, even she has had a conflict with a visiting Sergeant. Commenter states that she was 15 minutes late for a scheduled visit due to a bridge closure and the Sergeant cancelled her visit when she had no right to do so. She states that other visiting correctional officers told her the Sergeant will take her visit for the next day if she challenged the Sergeant. Commenter further states the Sergeant admitted that canceling the visit was her own policy not a visiting policy, but the visit was never made up nor the cost of her travel. Commenter believes if the Sergeant had the power of reasonable suspicion, she would only abuse it and what few rights she has left.

**Accommodation:** None.

**Response 48C:** The Department would like to assert to commenter that all Correctional Officers are required to sign an oath of office which holds them to a higher standard of professional conduct. Furthermore, there are Departmental regulations and operational procedures in place stating in part, "employees will be courteous and professional in their dealings with inmates, fellow employees, visitors and members of the public". If the commenter or other member of the public experiences such treatment, they are encouraged to file a citizen's complaint to the Institution Head where the Correctional Officer is employed according to the process in Title 15, Subsection 3391(c). The Department will not tolerate an abuse of power by an officer and has operational procedures in place specifically related to such issues.

**Comment 48D:** Commenter states that visitors are not inmates, but are free citizens. Commenter believes the proposed regulatory change over steps the line once again. The real concern of contraband should be focused on the in house problem and the duffle bags and purses that are brought inside. If CDCR wants to fix the problem, start at home, don't look at visitors. Visitors go through metal detectors and sit behind glass. Visitors do not bring in cell phones, guns, knives and cans of tobacco.

**Accommodation:** None.

**Response 48D:** The Department focuses on all areas of concern regarding contraband. These areas include staff and visitors alike. Safety and security is one of the primary goals of CDCR, therefore, the Department notes that not only are visitors subject to search but, all employees are subject to search criteria specific to the regulations that govern them.

The Department would like to refer commenter to statistical information gathered on visitors and the introduction of contraband into an institution. Please refer to Speaker #2, Response 2D.

In regards to employee searches, please refer to Speaker #2, Response 2F.





